

### **REMARKS**

With this paper, claims 1-17, 32-54, 118, 119, 122-125, 152 and 153 have been cancelled without prejudice or disclaimer. Claims 147-151 have been amended to present the claims in better form. Claims 154-160 are new. Support for the claim amendments can be found through the application as filed, e.g., page 21, line 21 – page 22, line 5 (e.g., page 21, line 25 - page 22, line 1); page 22, lines 17-18; and Example 1. No new matter has been added.

Upon entry of this amendment, claims 147-151 and 154-160 are pending in this application.

Applicants respectfully reserve the right to pursue any non-elected, canceled or otherwise unclaimed subject matter in one or more continuation, continuation-in-part, or divisional applications.

Applicants request reconsideration of the application in view of the amendments and arguments herein.

#### **Interview Summary**

Applicants thank Examiner Perriera for the courtesy of telephonic interviews with one of their undersigned representatives on May 5 and May 12, 2008 (“the Interviews”). During the Interviews, the rejection under 35 USC §103(a) was discussed. Although no final agreement was reached, the Examiner indicated that certain subject matter is likely patentable and agreed to consider Applicants’ amendments and arguments.

#### **Rejections under 35 U.S.C. §103**

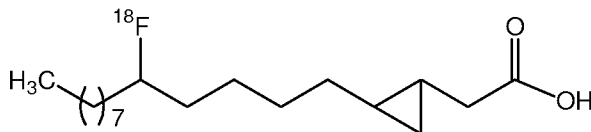
Claims 1-4, 7, 9, 11-13, 17, 44-47, 50, 52, 119, 123, 125 and 147-151 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over International Patent Publication No. WO 97/19705 to Elmaleh (“Elmaleh”), in view of United States Patent No. 4,323,547 to Knust, *et al.* (“Knust”) and No. 4,524,059 to Elmaleh (“US-Elmaleh”). In order to expedite prosecution and allowance of the subject application, claims 1-146 have been cancelled. Although Applicants do not agree

with the rejection, in view of the cancellation of claims, Applicants contend that the rejection is moot as to those claims. As to the presently-pending claims, the rejection is traversed.

The teachings of the Elmaleh, Knust, and US-Elmaleh references have been described previously (in the papers filed March 12, 2007, and July 20, 2007, which are incorporated herein by reference). For at least the reasons described in the papers filed March 12, 2007, and July 20, 2007, Applicants contend that none of the cited references, alone or in combination, renders obvious the pending claims.

Moreover, Applicants contend that, even if the Examiner had made out a *prima facie* case of obviousness (which Applicants dispute), unexpected results rebut any such *prima facie* case.

Applicants have previously submitted a Declaration Under 37 CFR 1.132 of David Elmaleh, Ph.D. (hereinafter "the Declaration"), which is incorporated herein by reference, describing unexpectedly superior properties of the presently claimed compounds compared to certain compounds allegedly disclosed in the cited references (or analogous to compounds allegedly disclosed). For example, the present Application discloses and claims the compound [ $^{18}\text{F}$ ]-9-fluoro-3,4-cyclopropylheptadecanoic acid (see, e.g., claim 147 and new claim 154), represented by the structure:



This compound, hereinafter referred to as [ $^{18}\text{F}$ ]FCPHA, has a cyclopropyl ring located at the 3,4-position (that is, the cyclopropyl moiety includes carbon atoms 3 and 4 of the fatty acid chain).

The Declaration described certain experiments in which [ $^{18}\text{F}$ ]FCPHA was compared to a beta-methyl fatty acid analog and to a 2,3-cyclopropyl fatty acid analog. As described in the Declaration, [ $^{18}\text{F}$ ]FCPHA showed unexpectedly superior results (e.g., in the heart-to-tissue ratio) compared to the beta-methyl fatty acid analog and to a 2,3-cyclopropyl fatty acid analog. This is important because the

diagnostic capability of an imaging agent (such as a cardiac imaging agent) can be improved by improving the target-to-non-target tissue ratio.

As discussed in the Declaration, it is unexpected and surprising that a compound of the present claims would have higher heart-to-tissue ratios than the compounds described above corresponding to the references cited by the Examiner. For this additional reason, Applicants contend that the cited references, whether considered alone or in any combination, cannot render obvious the pending claims.

The Office Action stated (e.g., at page 2 thereof) that the Declaration was "insufficient" to overcome the rejection of record. Applicants respectfully disagree. The Office Action does not appear to have fully considered the unexpected results described in the Declaration and summarized above, and does not set forth a specific reason for the alleged insufficiency of the Declaration. In fact, the Office Action reiterates that the position that the claimed invention would be obvious without discussing the unexpected results described in the Declaration. However, it is well established that "[e]vidence of unobvious or unexpected advantageous properties, such as superiority in a property the claimed compound shares with the prior art, can rebut *prima facie* obviousness". MPEP 716.02(a)(II). Applicants submit that, even if a *prima facie* case of obviousness was made out (which Applicants do not concede), the showing of unexpected results is sufficient to rebut any such *prima facie* case and to illustrate patentability of the subject claims.

Reconsideration and withdrawal of the rejection is proper and the same is requested.

### **CONCLUSION**

For at least the foregoing reasons, Applicants respectfully request reconsideration and withdrawal of all rejections and allowance of the application with all pending claims. If a telephone conference with Applicants' representative would be helpful in expediting prosecution of the application, the Examiner is invited to call either of the undersigned representatives at the telephone number indicated below.

Although it is believed that no extension of time is required, Applicants conditionally petition for any extension of time required for consideration of this response. Applicants do not believe that any further fees are required for consideration and entry of this Amendment and Response. Nevertheless, the Director is authorized to charge any required fee or credit any overpayment to Deposit Account No. 04-1105 under order number 62041 (51588).

Dated: May 13, 2008

Respectfully submitted,

By           /Mark D. Russett/          

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